IN THE HIGH COURT OF BOMBAY AT GOA
CONTEMPT APPEAL NO. 1 OF 2006

Anuja Prabhudessai,)
District & Sessions Judge,)
North Goa, Panaji, Goa.).. Appellant

Vs.

State of Goa,)
through its Chief Secretary,)
having Office at Secretariat,)
Porvorim, Bardez, Goa.).. Respondent

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S/Shri M.S.Usgaonkar, Senior Advocate with M.S.Sonak, Advocate for the Appellant.

Shri S.S.Kantak, Advocate General with Ms Rakhi Chodankar, Additional Government Advocate for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
R.S.MOHITE, JJ

DATED : 24TH AUGUST, 2007

ORAL JUDGMENT : (PER R.M.S.KHANDEPARKAR, J)

1. This appeal arises from Order dated 17th July, 2006 passed in Criminal Writ Petition No.1 of 2006 whereby while discharging the contempt notice certain observations have been made.

2. The impugned order is sought to be challenged firstly on the ground that the learned Single Judge

had no jurisdiction to deal with the matters regarding civil contempt at the relevant time considering the assignment of the judicial work by the Hon'ble the Chief Justice. It is contended on behalf of the appellant that at the relevant time, the assignment regarding civil contempts was not with the learned Single Judge.

3. Undoubtedly, the impugned order nowhere discloses that the point of lack of jurisdiction was ever raised before the learned Single Judge. Secondly it is not in dispute that after disposal of the petition by the learned Single Judge, the appellant, at any point of time, had filed any affidavit before the learned Single Judge bringing to his notice that the point of lack of jurisdiction was raised and yet the same was not considered by the learned Single Judge while disposing of the matter. In these circumstances, it is not open to the appellant to raise the point of lack of jurisdiction for the first time in this appeal. On this count itself, the point of lack of jurisdiction need not be addressed to.

4. It is however sought to be contended on behalf of the appellant that neither failure on the part of the appellant nor her consent could give jurisdiction

to the learned single Judge to deal with the contempt matter, once it is clear that the assignment in respect of contempt of court matters was with another Judge. This contention is also devoid of substance.

5. The question of absence of jurisdiction to the learned Single Judge to deal with the contempt proceedings does not arise at all. It is in exercise of the plenary powers of the High Court that every Judge of the High Court can deal with the contempt proceedings under Article 215 of the Constitution. Absence of assignment to deal with contempt proceedings under Contempt of Courts Act, would not debar a Judge of the High Court from taking note of the violation of any order passed in the course of a proceeding pending before the concerned Judge of the High Court and consequently to issue the show cause notice and further to deal with the matter. Undoubtedly, the power has to be exercised cautiously and sparingly. But when the administration of justice and the public interest demand the Court cannot abstain from performing its duty including that of punishing the person found disobeying the order of the Court. Non compliance of the order or direction of the High Court by the subordinate judicial officer would certainly warrant such exercise of power in

public interest. It is essentially for preserving judicial discipline.

6. The Apex Court in **Sukhdev Singh v. Hon'ble C.J., S. Teja Singh and the Hon'ble Judges of the Pepsu High Court at Patiala,** reported in AIR 1954 SC 186, while rejecting the contention about applicability of Code of Criminal Procedure to contempt proceedings before the High Court, had held that "The Constitution gives every High Court the right and the power to punish a contempt of itself." Further, In **High Court of Judicature at Allahabad through its Registrar v. Raj Kishore & Ors.,** reported in AIR 1997 SC 1186, it was held that :-

> "For upholding the majesty of the institution as such, therefore, the High Court as a Court of record can look into the grievance centering round the alleged breach of its order and it is this power to punish the contemnor that flows from Article 215 of the Constitution of India as well as from the relevant provisions of the Act. But how this grievance of the aggrieved party is to be processed and examined pertains to the realm of distribution of work and jurisdiction of

> the High Court amongst different Division Benches and that exercise is permissible to the Chief Justice of the High Court as per the rules framed by the High Court on its administrative side. **That exercise has nothing to do with Article 215. Article 215 saves the inherent powers of the High Court as a Court of record to suitably punish the contemnor who is alleged to have committed civil contempt of its order."** (Emphasis supplied.)

It is, therefore, abundantly clear that when an aggrieved party wants to initiate a contempt proceeding, he will have to move before the bench to whom the assignment in relation to such proceeding is enlisted in the roster approved by the Chief Justice of the High Court; but in case of exercise of such powers by the Court under Article 215, it has nothing to do with such assignment, and every Judge of High Court can exercise such power whenever its exercise is warranted.

7. It is then sought to be contended on behalf of the appellant that once the notice issued against the appellant is discharged, there could be no occasion to

issue any further direction in the matter. In that regard, our attention is sought to be drawn to the decision in the matter of **V.M.Manohar Prasad v. N. Ratnam Raju & Anr.,** reported in (2004)13 SCC 610 and **Midnapore Peoples' Co-op.Bank Ltd. & Ors. v. Chunilal Nana & Ors.,** reported in 2006(6) Scale 308, and to the operative portion of the impugned order.

8. The operative portion of the impugned order reads thus:-

> "The petition has already been disposed of based on the report submitted by the learned Sessions Judge on 14.7.2006 and, therefore, I do not wish to proceed ahead with the contempt notice issued to the learned Sessions Judge. Consequently, the same is hereby discharged. nevertheless, I direct the learned Registrar General of this Court to take/initiate appropriate disciplinary action against the learned District & Sessions Judge, Panaji for the two serious lapses referred to hereinabove so that such instances are not repeated by the subordinate Judicial Officers and there is a change of attitude in them. Registrar General to report to this Court about action taken,

within four months. Registrar to forwards a copy of this Order to the learned Registrar General."

9. In **V.M.Manohar Prasad's case (supra),** the Apex Court was dealing with an appeal against the order passed in contempt proceedings and therein it was held that once the learned Single Judge of the High Court in contempt proceedings had discharged the contemnor, he could not have issued directions to the Government to regularise the services of the employee by sanctioning the post. The matter had come up before the Apex Court in an appeal against the order passed in contempt proceedings by the High Court. The facts revealed from the judgment disclose that some of the employees of the Andhra Pradesh Scheduled Castes Finance Corporation had moved the High Court of Andhra Pradesh for regularisation of their services. The order granting relief in their favour was sought to be challenged before the Apex Court which came to be disposed of by holding that those employees who had completed five years' continuous service were to be considered for regularisation in accordance with the terms of GOMs No.212 dated 22nd April, 1994. Thereafter, some other employees moved for regularisation and in that context approached the High

Court. The learned Single Judge relying upon the decision of the Apex Court in the earlier matter directed that those who had completed five years' continuous service and those who had fulfilled the conditions of GOMs No.212 dated 22nd April, 1994 should be considered for regularisation. The said GOMs provided that absorption should be against clear vacancies of posts considered necessary to be continued as per workload excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee. Since the request of those employees for regularisation was turned down, the said employees took out contempt proceedings. The learned Single Judge of the Andhra Pradesh High Court dealing with the contempt matter while observing that the petitioners deemed to have been working against the clear vacancy directed the Government to sanction the post in Andhra Pradesh Scheduled Casts Finance Corporation of East Godavari District so that the said employees could be absorbed on permanent posts. The same was challenged by way of an appeal. In that context, the Apex Court held that "There is no doubt about the position under the law that in contempt proceedings no further directions could be issued by the court. In case it is found that there is violation of the order passed by the

court the court may punish the contemnor otherwise notice of contempt is to be discharged. An order passed in the contempt petition, could not be a supplemental order to the main order granting relief."

10. Obviously, the Apex Court has ruled that once it is found that there is violation of the order passed by the Court, the Court is certainly competent enough to punish the contemnor but if the violation is not established the contemnor has to be discharged; but the order in contempt petition cannot be supplemental one to the main order granting relief in relation to the main grievance of the party. In other words, the contempt proceedings are essentially to deal with the matter relating to the violation of the order passed by the Court and not for grant of any relief to the party to the proceedings. It is in that context, the Apex Court held that while disposing the contempt proceedings, the court could not have issued direction for regularisation of services by sanctioning the post which was, in fact, the main relief in the writ petition. That is not the case in the matter in hand. There is no direction in relation to any right or service condition of the appellant nor any issue affecting the right of the appellant herein has been decided. There is no direction to take any

particular action and punish the appellant or contemnor while discharging the show cause notice by the impugned order. The observations are in the nature of expression or disapproval of the manner in which the judicial officer had acted while dealing with the order issued by the High Court and in that regard, the Registrar General is expected to place the matter before the competent authority so that the competent authority may decide as to whether any disciplinary proceedings are required to be taken out against the concerned judicial officer or not. The order nowhere discloses any aspect of disciplinary proceedings against the concerned judicial officer having been decided either conclusively or finally or otherwise.

11. Attention was drawn to the paragraph 8 of the judgment of **M.V.Manohar Prasad's case (supra)** wherein it has been held that "If a direction is given by a court without jurisdiction, against such orders an appeal would lie to a court normally exercising the appellate jurisdiction." Undoubtedly the said observation was made in the facts and circumstances of the case which revealed that the learned Single Judge while disposing the contempt proceedings had issued direction to the Government to sanction the posts so

that the employees could be absorbed on permanent basis. The direction was essentially in relation to the claim of the employees for regularisation which was the subject matter of the main petition. It is settled law that every decision is an authority for what it actually decides. Any difference in the facts or additional facts can make a lot of difference in the presidential value of a decision [Vide: **Ispat Industries Ltd. v. Commissioner of Customs, Mumbai,** (2006)12 SCC 583)]. A decision cannot be said to be an authority on a point which has not been considered. [Vide: **Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & Etio & Ors.,** (2007)5 SCC 447)].

12. As already observed above, contempt proceedings are not for grant of relief to the party and the court cannot go into the merits of the claim of the complainant. It is essentially to uphold the majesty of law and dignity of courts. In the case in hand, as seen above, there is no specific direction in relation to the dispute in the main matter or even for taking specific disciplinary action against the concerned judicial officer. In fact, the direction is in the nature of expression of opinion requiring the Registrar General to place the matter before the

competent authority, and nothing more.

13. It was however sought to be contended on behalf of the appellant that there are certain observations made regarding the conduct of the judicial officer in the matter, though ultimately the proceedings have been dropped. Undoubtedly, the observations are in relation to the matter pertaining to the contempt proceedings. Undisputedly, those observations have been made after hearing the appellant and taking into consideration the defence of the appellant and the materials available on record. Being so, can it be said that the observations made with reference to the contempt proceedings would decide any of the rights of the parties or are sufficient to construe the same as the "judgment" within the meaning of the said expression under the Letters Patent, and whether intra-court appeal against such observations would be maintainable ?

14. In **Midnapore Peoples' Co-op.Bank Ltd.'s case (supra)**, it was held by the Apex Court that the appeal under Section 19 of the Contempt of Courts Act is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, i.e. an order imposing

punishment for contempt. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the Contempt of Courts Act. In Special circumstances, they may be open to challenge under Article 136 of the Constitution. It was further held that in a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties. It was further held in **Midnapore Peoples' Co-op. Bank Ltd.'s case (supra)** that any direction issued or decision made by the high Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the Contempt of Courts Act. The only exception is where such direction or decision is incidental or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions. If the High Court,

for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal) or by seeking special leave to appeal under Article 136 of the Constitution of India.

15. The decision of the Apex Court in **Midnapore Peoples' Co-op.Bank Ltd.'s case (supra),** therefore, clearly lays down the law that against the contempt proceedings culminated by way of discharge or dismissal of the proceedings, no appeal would lie under Section 19 of the said Act. However, in case, while discharging or dismissing, the learned Single Judge decides any issue relating to the merits of the dispute between the parties, or direction or decision incidental or inextricably connected with the order punishing for contempt, certainly such order can be subjected to a letters patent appeal. Obviously, therefore, the order discharging the notice issued in contempt proceedings cannot be said to be one which can be subjected to intra-court appeal. It is only in case of any decision which has the colour of

punishment to the contemnor, only that order can be challenged by way of intra-court appeal.

16. It has been strenuously argued on behalf of the appellant that the direction issued under para 11 of the impugned order clearly amounts to deciding an issue relating to the contempt proceedings. We do not find any substance in this contention. Undisputedly, the contempt notice has been discharged. Whatever observations are made and whatever directions are issued, have been made and issued after hearing the appellant. It is not the case of the appellant that in case the matter is placed before the Disciplinary Authority, the appellant will have no opportunity to putforth her case. Besides, the direction issued nowhere relates to any of rights of the appellant or any decision on any of the issues relating to the matter in respect of which the show cause notice for contempt of court was issued. It merely requires the Registrar General to place the matter before the appropriate authority for taking appropriate action if required in accordance with the provisions of law, and therefore, it would not amount to the decision in relation to any of the rights of the appellant. Viewed from this angle, therefore, we do not find any infirmity as such in the order delivered by the

learned Single Judge, nor on account of the directions contained in para 11 of the impugned order, it warrants interference in the contempt appeal.

17. Being so, there is no substance in the grievance about the direction issued to the Registrar General who is expected to take necessary steps for placing the matter before the competent authority. It is the prerogative of the Hon'ble the Chief Justice and the Disciplinary Committee of the High Court to take appropriate decision in that regard and the Registrar General cannot take decision independently in that respect. Being so, the said direction, in our considered opinion, should be understood as one requiring the Registrar General to place all the concerned materials before the Hon'ble the Chief Justice without expressing any opinion on the point of disciplinary action, if any, against the appellant At the same time, in case the matter is placed before the Disciplinary Committee, needless to say that the Disciplinary Committee would be entitled to take appropriate decision in accordance with the provisions of law based on all the materials available before the Committee. There are no basis to presume that the Committee will take final decision solely on the basis of the observations made in the impugned order or that

the disciplinary action, if any, would be taken without hearing the appellant. In this view of the matter, we do not find any case for setting aside the impugned order.

18. With the above observations, the appeal, therefore, is liable to be dismissed and is accordingly hereby dismissed. No order as to costs.

(R.M.S.KHANDEPARKAR, J)

(R.S.MOHITE, J)